IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.128/2003

Decided on.25.7.2007

Mathu Ram **…Petitioner.**

Versus

State of H.P. and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes.*

For the petitioner : **Mr. Ramakant Sharma, Advocate.**

For the respondents **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan, Deputy Advocate General.**

Rajiv Sharma, J.

Briefly stated the facts of the case are that the petitioner's land comprised in khasra No. 147, 173, 174 and 184 was utilized by the State for the construction of Narag-Wasni-Dinger road. He was not paid any compensation for utilizing his land. He has placed on record copy of order dated 18.10.1995 passed by a Division Bench of this Court in CWP No. 1859/95. In CWP No. 1859/95 the petitioners had prayed for directions to the State to pay them compensation after acquiring their land which has been utilized for the construction of the road. This Court had directed the state to take appropriate steps for payment of compensation in terms of Land Acquisition Act, 1894 with a further direction to complete the proceedings within one year. He has also placed on record copy of award (Annexure P-3) passed by the District Judge, Sirmaur District at Nahan, who had announced the award in land references referred by similarly

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

situate persons whose land was acquired for the construction of Narag-Wasni-Dinger road. Primarily the stand of the State is that though the road was constructed in the year 1971, but the same was constructed under crash programme (pilot programme) by Block Development Officer, Pachhad under community development scheme. The thrust of the reply filed by the respondent-State is that under the scheme the beneficiaries were not to be paid any compensation on the basis of their implied consent. The State has also placed on record copy of document (Annexure R-1) dated 28.3.1979 whereby a decision has been conveyed to all the Superintending Engineers and the Executive Engineers by the Chief Engineer (B&R), PWD not to pay any compensation to the land owners.

Mr. Ramakant Sharma, Advocate has strenuously argued that the petitioner's land could not be utilized by the State/State Agencies for the construction of Narag-Wasni-Dinger road without paying compensation. He further contended that the petitioner could not be deprived of his property save in accordance with law.

The Learned Advocate General has strenuously argued that the road in question was constructed under the community development scheme and the owners of land had given implied consent for the construction of the road and thus the petitioner is not entitled to any compensation.

I have heard the learned counsel for the parties and perused the record.

Admittedly the land of the petitioner has been utilized for the construction of Narag-Wasni-Dinger road. A detailed procedure has been prescribed in the Land Acquisition Act, 1894. Respondent-State had not initiated any steps for the acquisition of the land of the petitioner while

constructing the Narag-Wasni-Dinger road. The Block Development Authority working under the community development scheme was under the control of the State Government. The State cannot deprive the citizens of their right to claim compensation for utilization of their land only on the ground that it was not the Public Works Department but a different agency which had constructed the road. This Court had issued directions to the State for initiating acquisition proceedings for making compensation to the petitioners arrayed in CWP No. 1859/95 decided on 18.10.1995. The petitioners' grievance in CWP No. 1859/1995 was also that their lands had been acquired for the construction of Narag-Wasni-Dinger road, but they had not been paid any compensation. It is evident from the contents of Annexure P-3 award dated 4.10.2005 that the State Government had issued notification under section 4 of the Land Acquisition Act, 1894 on 16.10.2001 requiring land for the construction of Narag-Fagla road in vaillage Haloti. The petitioner is similarly situate person whose land has also been utilized for the construction of road but not paid any compensation by the State. There is no delay or laches in filing the writ petition since the petitioner has been deprived of his property in violation of Article 300-A of the Constitution of India. The State cannot take this hyper-technical objection to deny the legitimate compensation to the citizens whose lands had been utilized for the construction of road. The State had also granted compensation to the similarly situate persons and was expected that the petitioner whose land had also been utilized was compensated in accordance with law. The State cannot presume that the owners of the land have given implied consent. The State has not placed on record any evidence to substantiate the plea that the owner has given implied consent for the construction of road without getting any compensation.

The petitioner has been deprived of his property in violation of Article 300-A of the Constitution of India. Article 300-A of the Constitution of India reads as under:

> **"300-A. *Persons not to be deprived of property save by authority of law*.- No person shall be deprived of his property save by authority of law.**

The Apex Court has explained the word 'law' as occurring in Article 300-A of the Constitution of India. Their Lordships have held ***in Hindustan Times and others Versus State of U.P. and another***, (2003) 1 SCC 591 as under:

> **"The expression "law", within the meaning of Article 300-A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law.**
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> **In *Bishambhar Dayal Chandra Mohan v. State of U.P.* this Court held as under: (SCC p.66, para 41)**
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> > ***"41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word 'law' in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law."***

The Apex Court in ***State of U.P. and others Versus Manohar***, (2005) 2 SCC 126 has held as under:

> **"The grievance of the respondent before the High Court was that his name was high-handedly deleted from the revenue record and the revenue record thereafter showed the name of the appellants. He was dispossessed from the land and no compensation was paid, nor were any steps taken in law for acquiring the land. The respondent demanded an amount of Rs.10 lakhs as compensation with interest from the date of dispossession.**
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> **The appellants appeared through counsel before the High Court and produced certain records. In view of the correspondence, to which we have referred, between the officers of the State, the High Court came to the conclusion that the case made out by the respondent was acceptable and that the State should be directed to take steps to pay compensation to the petitioner within 3 months with appropriate interest in accordance with the law. The High Court contemptuously dismissed the arguments of the counsel for the appellant that the petitioner had already been paid the compensation but that the records evidencing such payment were not available as they had been 'weeded out' due to the delay on the part of the respondent in approaching the Court.**
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> **As a matter of fact, the appellants were unable to produce even a scrap of evidence indicating that the land of the respondent had been taken over or acquired in any manner known to law or that he had ever been paid any compensation in respect of such acquisition. That the land was thereafter constructed upon, is not denied.**
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> **Having heard the learned counsel for the appellants, we are satisfied that the case projected before the Court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that, at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the**

compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent.

Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the 44th Amendment to the Constitution, Article 300A has been placed in the Constitution, which reads as follows:

> **"300A-** ***Persons not to be deprived of property save by authority of law*** **- No person shall be deprived of his property save by authority of law."**

This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution. In our view, the High Court was somewhat liberal in not imposing exemplary costs on the appellants. We would have perhaps followed suit, but for the intransigence displayed before us.

Their Lordships of the Hon'ble Supreme Court in ***P.T. Munichikkanna Reddy & Ors. Vs. Revamma and Ors., 2007(6) SCALE 95*** have held as under:

> **"There is another aspect of the matter, which cannot be lost sight of. The right of property is now considered to be not only a constitutional or statutory right but also a human right.**
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> **Declaration of the Rights of Man and of the Citizen, 1789 enunciates right to property under Article 17:**
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> ***"since the right to property is inviolable and sacred, no-one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid".***

Moreover, Universal Declaration of Human Rights, 1948 under section 17(i) and 17(ii) also recognizes right to property:

> **"17 (i) Everyone has the right to own property alone as well as in association with others.**
>
> **(ii) No-one shall be arbitrarily deprived of his property."**

Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgment of Beaulane Properties Ltd. v. Palmer [2005 (3) WLR 554 : 2005 EWHC 817 (Ch.)] and JA Pye (Oxford) Ltd v. United Kingdom [2005] ECHR 921 [2005] 49 ERG 90, [2005] ECHR 921]' The court herein tried to read the Human Rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights has widened so much that now property dispute issues are also being raised within the contours of human rights."

The upshot of the above discussion is that the road was constructed by the State-State Agency in the year 1971 called 'Narag-Wasni-Dinger road'. The land of the petitioner was utilized for the construction of road. The petitioner has not been paid any compensation for utilizing his land. The similarly situate persons whose lands had been utilized for the construction of the road had been paid compensation. The petitioner has been deprived of his property in violation of Article 300-A of the Constitution of India. The petitioner is entitled to get compensation for the utilization of his land. The respondents are liable to be directed to

initiate acquisition proceedings under the Land Acquisition Act, 1894 for acquiring the land of the petitioner in accordance with law.

Accordingly this petition is allowed. The respondents are directed to initiate acquisition proceedings for acquiring the land of the petitioner under the provisions of the Land Acquisition Act, 1894 and to complete the same within a period of 6 months from the date of receipt of the certified copy of this judgment. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 25, 2007
Awasthi